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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 335 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

POWER BUILD LTD

Appearance:

MR MANISH R BHATT for Petitioner

MR MANISH SHAH for MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE K.M.MEHTA

Date of decision: 20/12/1999

ORAL JUDGEMENT (Per Patel, J.)

The Commissioner of Income Tax, Baroda, requested

the Income Tax Appellate Tribunal, Ahmedabad Bench [hereinafter referred to as the Tribunal] to refer two questions of law; However, only one question is referred which is required to be considered. Referred question reads as under:-

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in law in coming to the conclusion that the canteen building is the factory building entitled for the depreciation at the rate of 5% as against 2.5%."

2. The assessee, manufacturing various types of motors and weighing machines, provided a canteen for workman at the cost of Rs.2,82,268/-. The assessee claimed depreciation at the rate of 5% specifically stating that 2.5% rate is applicable only in respect of office building as shown in the Schedule. The relevant Schedule at Appendix 1 under Rule 5 is required to be seen. So far as first clause regarding a building of selected material is concerned, 2.5% was the amount of depreciation at the relevant time. In the remarks column it is stated that "double these rates will be taken for factory building excluding office, godowns, officers' and employees' quarters". Therefore, the question whether double rates should be allowed or not is dependent on the finding whether the canteen can be said to be a part of the factory building or not.

3. Under the Industrial law, every industrial concern should provide a canteen; As a matter of fact, providing a canteen is a welfare measure. It is a matter of common knowledge that if the canteen is appertaining to the factory premises, workmen can rejoin their duties without delay. That apart, before the Karnataka High Court in the case of C.I.T. VS. MOTOR INDUSTRIES CO. LTD. reported in 158 ITR 734, the following question was referred for consideration:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee was entitled to get higher depreciation on canteen building?".

4. In the aforesaid case, the assessee claimed higher depreciation on canteen on the basis that it formed part of the factory. In the original assessment, the claim was allowed but in the reassessment, the claim was disallowed. In appeal, the Commissioner of Income Tax agreed with the view taken by the Income Tax Officer. The Tribunal ultimately allowed the appeal of the

assessee relying on the decision in a case decided by the Madras High Court in C.I.T. vs. Engine Valves Ltd reported in 126 ITR 347.

5. In the instant case, it is not in dispute that the canteen is within factory premises. It is required to be noted that canteen in every factory is meant for welfare of the workmen, and it is generally a part and parcel of the factory and it is certainly susceptible to more damage than the factory building due to the nature of the use, as held by the Karnataka High Court in the abovereferred case.

6. Madras High Court in the aforesaid case of Engine Valves reported in 126 ITR 347 pointed out as to what would be the life of the building and how it would be affected. Relevant portion which is also considered by the Karnataka High Court, reads as under:-

"But, whatever expression we might employ to describe the culinary process, there is no doubt whatever that the use of fuel and other forms of energy in that part of the canteen would have the same damaging effect on the life of the building as a regular manufacturing process would by the use of plant or machinery. ... These considerations definitely point out to the conclusion that a canteen building is, in the proper sense of the term, a factory building for the purpose of depreciation allowance".

7. Looking to the schedule at the Appendix-I it is clear that so far as factory building is concerned, double the rate is to be taken into consideration. However, what is specifically excluded must be considered while granting the relief in a case. Office, godowns, officers' and employees' quarters are excluded, but not the canteen. It has not been rightly excluded considering the nature, use and situation of the building.

8. Thus, the view which we are inclined to take that Canteen building is entitled to depreciation as part and parcel of factory building is thus supported by even at look at the schedule at the appendix-I. The schedule at the Appendix-I gives internal indication to the conclusion which we are inclined to take.

9. In view of what we have stated above, our considered view is that canteen building is a part and

parcel of factory building and looking to the nature and use of the building, the Tribunal has rightly arrived at the conclusion. Therefore, we answer the question in the affirmative, in favour of the assessee and against the Revenue.

csm./ -----